

### **REMARKS/ARGUMENTS**

In the Office Action dated June 11, 2010 (hereinafter, "Office Action"), claims 36-38 were rejected under 35 U.S.C. § 101. Claims 1, 3-8 and 10-38 were rejected under 35 U.S.C. § 112, first paragraph. Claims 1-2, 4-6, 23, 25-32 and 35 stand rejected under 35 U.S.C. § 102(e). Claims 3, 7-22, 24, 33-34, 36-38 stand rejected under 35 U.S.C. § 103(a). By this paper, claims and 1, 8, 22, 23, 25, 30, 31 and 35-38 are being amended.

Applicants respectfully respond to the Office Action.

#### **I. Claims 36-38 Rejected Under 35 U.S.C. § 101**

Claims 36-38 stand rejected under 35 U.S.C. § 101. Specifically, the Office Action indicated that these claims included transitory media such as signals. (See Office Action, page 2). The Office Action suggested overcoming this rejection by changing the phrase "computer readable medium" to "non-transitory computer readable medium." (Id.) By this paper, Applicants adopt this suggestion. Accordingly, Applicants respectfully request that the rejection of claims 36-38 under 35 U.S.C. § 101 be withdrawn.

#### **II. Claims 1, 3-8 and 10-38 Rejected Under 35 U.S.C. § 112, First Paragraph**

Claims 1, 3-8 and 10-38 stand rejected under 35 U.S.C. § 112, first paragraph. Specifically, the Office Action indicated that the phrase "expected average data requirements" was new matter and was not supported by the specification. (See Office Action, page 3). By this paper, the phrase "expected average data requirements" is removed from the claims. Accordingly, Applicants respectfully request that the rejection of claims 1, 3-8 and 10-38 under 35 U.S.C. § 112, first paragraph be withdrawn.

#### **III. Claims 1, 2, 4-6, 23, 25-32 and 35 Rejected Under 35 U.S.C. § 102(e)**

Claims 1, 2, 4-6, 23, 25-32 and 35 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,269,423 to Lee et al. (hereinafter, "Lee"). Applicants respectfully request reconsideration in view of the above claim amendments and the following remarks.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” MPEP § 2131 (citing Verdegaal Bros. v. Union Oil Co. of California, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). “The identical invention must be shown in as complete detail as is contained in the ... claim.” Id. (citing Richardson v. Suzuki Motor Co., 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)). In addition, “the reference must be enabling and describe the applicant’s claimed invention sufficiently to have placed it in possession of a person of ordinary skill in the field of the invention.” In re Paulsen, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).

Independent claim 1 has been amended to recite that “the expected data requirements comprise an average value.” Support for this claim subject matter is found in paragraph [0062] of the filed specification.

Lee does not disclose that “the expected data requirements comprise an average value” because Lee merely determines an actual bandwidth (that is gathered) and does not teach calculating an average value for the expected (predictive) values. Specifically, Lee describes a “QoS-based call admission system and method for a mobile communication system.” (Lee, abstract). In Lee, a “profile server 40 stores information in user profiles such as the Identifier (ID) of each subscriber and authentication parameter[s].” (Lee, col. 1, lines 45-47). The “profile server” also includes a “Service Type, indicating the type of service and a Service QoS Parameter Recorder containing a set of parameters related to a QoS level.” (Lee, col. 4, lines 44-47). As best understood, the Office Action equates the actual data in the “user profile” in Lee to the “admission profile” in amended claim 1. (See Office Action, pages 2-3). However, the “user profile” in Lee does not teach an “average” value; there is no indication that an “average” value is being calculated—e.g., that values are being averaged together as a method for obtaining the expected data requirements. For example, in a first embodiment illustrated in Figure 3A of Lee, the “QoS parameter Recorder is determined according to the definition of QoS that minimum x bits and maximum z bits are transmitted for y seconds.” (Lee, col. 4, lines 55-57). In a second embodiment illustrated in Figure 3B, the “definition of QoS...is defined to be” a “minimum x bits per y second,” a “maximum z bits per y second,” a “minimum x bits per y second with a weighting factor  $\alpha$  ( $\alpha \leq 1$ ),” or a “maximum z bits per y second

with a weighting factor  $\beta$  ( $\beta \leq 1$ ).” (See Lee, col. 5, lines 3-13). Therefore, the “QoS parameter” is defined by either a range of data rates (in the first embodiment) or an upper or lower data rate limit (in the second embodiment), which are not “average value[s].” Again, there is no teaching how the range of values or data rates taught by Lee constitutes an “average” value. Furthermore, amended claim 1 indicates that the data requirement is an “expected” or predictive value. This value is a prediction of what the actual value will be in the future. There is no indication in Lee that the admission profile comprises such expected (predicted) values. As noted above, the data found in Lee’s profile comprise a range of data rates or an upper or lower data rate limit and are actual data values rather than expected values. For this reason, Lee does not disclose that “the expected data requirements comprise an average value,” as recited by amended claim 1.

Independent claim 1 also recites “second logic to allocate capacity ..., wherein capacity is allocated for remote devices with capacity commitments in the admission profile limited to their capacity commitments before remaining capacity is allocated to any unsatisfied data transmission indicators.” This claim subject matter is not disclosed by Lee.

As best understood, the Office Action cites to column 7, lines 44-67, column 9, lines 3-18 and column 8, lines 56-64 of Lee as allegedly teaching this claim subject matter. However, this disclosure of Lee indicates that the “BTS controller 211 determines whether a data rate required to guarantee the QoS of the call can be supported” (Lee, col. 6, lines 53-57) and that the BSC may address whether to add a new call by “determin[ing] the availability of the call to the Non-QoS subscriber based upon the remaining bandwidth.” (Lee, col. 8, lines 56-64). (See also, Lee, col. 9, lines 3-18). However, determining whether a QoS is supported or determining whether an additional call may be added based upon the available bandwidth does not indicate that “capacity is allocated for remote devices with capacity commitments in the admission profile limited to their capacity commitments before remaining capacity is allocated to any unsatisfied data transmission indicators.” There is no indication in Lee of an allocation of capacity to remote devices up to their capacity commitments before other allocations are made. Furthermore, as illustrated by Lee’s Figure 9, if all of the resources in Lee are not available to comply with the requested QoS, none of the resources are allocated. (See Lee, Figure 9, elements 506, 510, 512 and 516). Waiting until all of the resources are

available before allocating the resources, as taught by Lee, does not teach allocating some resources (e.g., the resources in the admission profile) before other resources. For this reason, Lee does not disclose “second logic to allocate capacity ..., wherein capacity is allocated for remote devices with capacity commitments in the admission profile limited to their capacity commitments before remaining capacity is allocated to any unsatisfied data transmission indicators,” as recited by amended claim 1.

For at least the foregoing reasons, Applicants respectfully submit that amended claim 1 is allowable. Claims 4-6 depend from claim 1, and are therefore allowable for at least the same reasons as claim 1.

Claim 23 as presented herein recites that “the admission profile is indicative of expected data requirements for flows already admitted, wherein the expected data requirements comprise an average value.” Claim 23 also recites that the “capacity is allocated for remote devices with capacity commitments in the admission profile limited to their capacity commitments before remaining capacity is allocated to any unsatisfied data transmission indicators.” As discussed above, Lee does not disclose this claimed subject matter. Accordingly, Applicants respectfully submit that amended claim 23 is allowable.

Claim 25 as presented herein recites that “the admission profile is indicative of expected data requirements for flows already admitted, wherein the expected data requirements comprise an average value.” Claim 25 also recites that the “capacity is allocated for remote devices with capacity commitments in the admission profile limited to their capacity commitments before remaining capacity is allocated to any unsatisfied data transmission indicators.” Accordingly, Applicants respectfully submit that amended claim 25 is allowable. Claims 26-29 depend from claim 25, and are therefore allowable for at least the same reasons as claim 25.

Claim 30 as presented herein recites that “the admission profile is indicative of expected data requirements for flows already admitted, wherein the expected data requirements comprise an average value.” Accordingly, Applicants respectfully submit that amended claim 30 is allowable.

Claim 31 as presented herein recites that “the admission profile is indicative of expected data requirements for flows already admitted, wherein the expected data requirements comprise an

average value.” Accordingly, Applicants respectfully submit that amended claim 31 is allowable. Claim 32 depends from claim 31, and is therefore allowable for at least the same reasons as claim 31.

Claim 35 as presented herein recites that “the admission profile is indicative of expected data requirements for flows already admitted, wherein the expected data requirements comprise an average value.” Accordingly, Applicants respectfully submit that amended claim 35 is allowable.

**IV. Claim 7 Rejected Under 35 U.S.C. § 103(a)**

Claim 7 stands rejected under 35 U.S.C. § 103(a) based on Lee in view of U.S. Patent No. 6,728,270 to Meggers et al. (hereinafter, “Meggers”). Applicants respectfully request reconsideration in view of the above claim amendments and the following remarks.

Claim 7 depends from claim 1. As discussed above, Applicants respectfully submit that claim 1 should be allowable. Accordingly, Applicants respectfully submit that claim 7 should also be allowable for at least the same reasons as presented above in connection with claim 1.

**V. Claim 3 Rejected Under 35 U.S.C. § 103(a)**

Claim 3 stands rejected under 35 U.S.C. § 103(a) based on Lee in view of U.S. Patent No. 6,567,387 to Dulin et al. (hereinafter, “Dulin”). Applicants respectfully request reconsideration in view of the above claim amendments and the following remarks.

Claim 3 depends from claim 1. As discussed above, Applicants respectfully submit that claim 1 should be allowable. Accordingly, Applicants respectfully submit that claim 3 should also be allowable for at least the same reasons as presented above in connection with claim 1.

**VI. Claims 8, 9, 11, 13-17, 19, 20, 22, 24, 33 and 34 Rejected Under 35 U.S.C. § 103(a)**

Claims 8, 9, 11, 13-17, 19, 20, 22, 24, 33 and 34 stand rejected under 35 U.S.C. § 103(a) based on Lee in view of U.S. Patent No. 6,650,630 to Haartsen (hereinafter, “Haartsen”). Applicants respectfully request reconsideration in view of the above claim amendments and the following remarks.

The factual inquiries that are relevant in the determination of obviousness are determining the scope and contents of the prior art, ascertaining the differences between the prior art and the claims in issue, resolving the level of ordinary skill in the art, and evaluating evidence of secondary consideration. KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398, 406 (2007) (citing Graham v. John Deere Co. of Kansas City, 383 U.S. 1, 17-18 (1966)). As the Board of Patent Appeals and Interferences has recently confirmed, "obviousness requires a suggestion of all limitations in a claim." In re Wada and Murphy, Appeal 2007-3733 (citing CFMT, Inc. v. Yieldup Intern. Corp., 349 F.3d 1333, 1342 (Fed. Cir. 2003)).

Amended claim 8 recites that "the admission profile is indicative of expected data requirements for flows already admitted, wherein the expected data requirements comprise an average value." Claim 8 further recites that "capacity is allocated for remote devices with capacity commitments in the admission profile limited to their capacity commitments before remaining capacity is allocated to any unsatisfied data transmission indicators." As discussed above, Lee does not teach or suggest this claimed subject matter. Haartsen is cited as allegedly teaching a time-domain divisions system. (See Haartsen, col. 7, lines 34-46). Haartsen, however, does not make up for the deficiencies of Lee. For this reason, the combination of Lee and Haartsen fails to teach or suggest the subject matter recited by amended claim 8.

Claims 11, 13, 14, 15-17 and 19-20 depend from claim 8. As discussed above, Applicants respectfully submit that claim 8 should be allowable. Accordingly, Applicants respectfully submit that claims 11, 13, 14, 15-17 and 19-20 are allowable for at least the same reasons as presented above in connection with claim 8.

Amended claim 22 recites that "the admission profile is indicative of expected data requirements for flows already admitted, wherein the expected data requirements comprise an average value." Claim 22 further recites that "capacity is allocated for remote devices with capacity commitments in the admission profile limited to their capacity commitments before remaining capacity is allocated to any unsatisfied data transmission indicators." As discussed above, the combination of Lee and Haartsen does not teach or suggest this claimed subject matter. Accordingly, Applicants respectfully submit that amended claim 22 is allowable.

Claim 24 depends from claim 23. As discussed above, Applicants respectfully submit that claim 23 should be allowable. Accordingly, Applicants respectfully submit that claim 24 is allowable for at least the same reasons as presented above in connection with claim 23.

Claims 33-34 depend from claim 31. As discussed above, Applicants respectfully submit that claim 31 should be allowable. Accordingly, Applicants respectfully submit that claims 33-34 are allowable for at least the same reasons as presented above in connection with claim 31.

**VII. Claims 12 and 18 Rejected Under 35 U.S.C. § 103(a)**

Claims 12 and 18 stand rejected under 35 U.S.C. § 103(a) based on Lee in view of Haartsen and further in view of Meggers. Applicants respectfully request reconsideration in view of the above claim amendments and the following remarks.

Claims 12 and 18 depend from claim 8. As discussed above, Applicants respectfully submit that claim 8 should be allowable. Accordingly, Applicants respectfully submit that claims 12 and 18 should also be allowable for at least the same reasons as presented above in connection with claim 8.

**VIII. Claims 10 and 21 Rejected Under 35 U.S.C. § 103(a)**

Claims 10 and 21 stand rejected under 35 U.S.C. § 103(a) based on Lee in view of Haartsen and further in view of Dulin. Applicants respectfully request reconsideration in view of the above claim amendments and the following remarks.

Claims 10 and 21 depend from claim 8. As discussed above, Applicants respectfully submit that claim 8 should be allowable. Accordingly, Applicants respectfully submit that claims 10 and 21 should also be allowable for at least the same reasons as presented above in connection with claim 8.

**IX. Claims 36 and 38 Rejected Under 35 U.S.C. § 103(a)**

Claims 36 and 38 stand rejected under 35 U.S.C. § 103(a) based on Lee in view of U.S. Patent No. 7,085,279 to Kumar et al. (hereinafter, "Kumar"). Applicants respectfully request reconsideration in view of the above claim amendments and the following remarks.

The standard to establish a *prima facie* case of obviousness is provided above.

Claim 36 recites that the “admission profile is indicative of expected data requirements for flows already admitted, wherein the expected data requirements comprise an average value.” Claim 36 further indicates that “capacity is allocated for remote devices with capacity commitments in the admission profile limited to their capacity commitments before remaining capacity is allocated to any unsatisfied data transmission indicators.” As discussed above, Lee does not teach or suggest this claimed subject matter. Kumar is cited as teaching a computer readable media. Kumar, however, does not make up for the deficiencies of Lee. For this reason, the combination of Lee and Haartsen fails to teach or suggest the subject matter recited by amended claim 36.

Amended claim 38 recites “admission profile is indicative of expected data requirements for flows already admitted, wherein the expected data requirements comprise an average value.” Claim 38 further indicates that “capacity is allocated for remote devices with capacity commitments in the admission profile limited to their capacity commitments before remaining capacity is allocated to any unsatisfied data transmission indicators.” As discussed above, the combination of Lee and Kumar does not teach or suggest this claimed subject matter. Accordingly, Applicants respectfully submit that amended claim 38 is allowable.

**X. Claim 37 Rejected Under 35 U.S.C. § 103(a)**

Claim 37 stands rejected under 35 U.S.C. § 103(a) based on Lee in view of Kumar in further view of Haartsen. Applicants respectfully request reconsideration in view of the above claim amendments and the following remarks.

Claim 37 depends from claim 36. As discussed above, Applicants respectfully submit that claim 36 should be allowable. Accordingly, Applicants respectfully submit that claim 37 should also be allowable for at least the same reasons as presented above in connection with claim 36.



**CONCLUSION**

In view of the foregoing, Applicants respectfully submit that all pending claims in the present application are in a condition for allowance, which is earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

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